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NO. COA06-949

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

STATE OF NORTH CAROLINA

v. Guilford County
No. 05 CRS 74570

RONNIE MCNEIL

Appeal by defendant from judgment entered 14 December 2005 by Judge Catherine C. Eagles in Guilford County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Mark A. Davis, for the State.

Jarvis John Edgerton, IV, for defendant appellant.

McCULLOUGH, Judge.

Defendant was found guilty of robbery with a dangerous weapon and received an active prison sentence of 103 to 133 months. On appeal, he challenges the trial court's refusal to instruct the jury on voluntary intoxication as a potential defense to the charge. We find no error.

The State adduced evidence tending to show that defendant assaulted Nikita Williamson and stole her purse at approximately 1:00 a.m. on 8 April 2005, on the campus of North Carolina A & T University (NCA&T) in Greensboro. At the time of the robbery, Williamson was walking from Aggie Suites to her residence in Barbee

Hall. As she reached the outside of her residence hall, defendant ran up to her with a brick in his right hand. He threw the brick at Williamson, striking her on the arm and side, and grabbed her purse. After struggling with defendant, she surrendered her purse to him when she saw a silver-colored object in his left hand. As defendant ran away, Williamson screamed for help. Campus police responded to the scene and drove Williamson around campus to look for the robber. Notified that a suspect was taken into custody, police took Williamson to the location of the arrest. She found her purse "laying in the mud" with her personal effects scattered beside it. At the campus police station, she identified a muddy defendant as her assailant. Williamson testified at defendant's trial and identified him to the jury as the man who hit her with the brick and stole her purse on 8 April 2005.

Lieutenant Jamu Kimyakki Sanders of the NCA&T Police Department was in his patrol car in a parking lot on Luther Street on the early morning of 8 April 2005. He "heard a loud screaming noise" and saw defendant running from the direction of the noise "at a high rate of speed." Hearing another scream, Sanders proceeded to the intersection of Luther and Bluford Streets, where Williamson told him that "she had just been robbed and assaulted with a brick." Sanders notified his fellow officers of the suspect's path of flight and proceeded in that direction toward the intersection of Bluford and Daniel Streets. When he arrived, defendant was in custody. Defendant's "clothes were real warm" and he was "sweating profusely[.]" Based on his conversation with

Williamson, Sanders asked defendant if he had a knife. Defendant told Sanders "that he dropped the knife while he was running and that he had just hit[] her with a brick." Defendant gave Sanders his name and address and complained of pain in his back and ankle. When asked why he was in the area, defendant replied that "he needed to get some money." Sanders detected a "strong odor of alcohol" on defendant's person and saw defendant vomit next to an ambulance. However, defendant "was coherent[,]" and his "[s]peech was never really slurred."

Officer Garfield Whitaker observed defendant running from the direction of the robbery toward a construction site across from Benbow Road. When defendant reached the deep mud of the construction area, he slipped and fell twice. Whitaker took him into custody as he reached the wood line. Defendant, who emitted a "pretty strong odor of alcohol" and "was intoxicated," told Whitaker that he had injured his right ankle. He also said that he was tired and felt as though he was going to vomit. Whitaker called for an ambulance. Defendant "spoke clearly and coherently" to Whitaker and did not appear to be "extremely intoxicated" or "drunk[.]" It appeared to Whitaker that defendant "had a beer or so" and was "sweating profusely" because he had been running.

Officer J.M. White rode in the ambulance with defendant to Moses Cone Hospital. Defendant smelled of alcohol but "was coherent. His speech was not slurred." Defendant cooperated with EMS workers, spoke clearly and concisely, and "was able to hold a conversation." At the hospital, defendant was visited by his wife

and sister. After asking White "what charges he was facing[,]" defendant said to his sister, "All I wanted was the money." Defendant then told White that he drank two beers and purchased a bottle of whiskey at a store on East Market Street just prior to the robbery. He walked to a white house on NCA&T's campus and sat on the porch. Defendant saw a female walking by herself and "thought 'easy money.'" When he approached her and tried to take her purse she screamed. Seeing Sanders' patrol car, defendant threw a brick at the female and ran.

Detective Marty Tillery interviewed defendant at 4:30 a.m. at the University's police department. Defendant admitted robbing Williamson with a "rock[,]" and told Tillery, "I knew I was wrong. . . . I was just sitting on the porch, and the shit just came out. I didn't mean to hurt anybody." Defendant said that he had consumed thirty-two ounces of beer and two gulps of whiskey earlier in the evening. A videotape of his interview was played for the jury.

Defendant testified that he spent the evening of 7 April 2005 at a party at his sister's house on Abington Drive. He did not drink any beer but drank "a good fair amount of" whiskey over a three- or four-hour period. As the party wound down, defendant walked outside, "realized how drunk [he] really was[,]" and decided "to walk home to [his] wife's house." On his way home, he stopped at a friend's apartment on Bluford Street. He knocked at his friend's door but received no answer. As he left the porch of the apartment building, defendant heard someone yell, "There he go. There he go[,]" and saw four people running toward him. He turned

to run away from the group and collided with Williamson, who was walking in the street. Defendant did not take Williamson's pocketbook but pushed her out of his path, accidentally knocking her to the ground. Defendant continued to flee the oncoming group until he fell down in a muddy field and was taken into custody by campus police. While waiting to go to the hospital, defendant threw up beside the ambulance. He did not make any incriminating statements at the scene, in the ambulance, or at the hospital. He told his sister at the hospital only that the police were threatening to lock him up because Williamson had accused him of taking her purse. After he was transported to the campus police station to be interviewed, defendant falsely confessed to the robbery so that the detective would "take [him] back downtown," where his wife and sister were waiting for him.

Defendant's sister, Barbara Russell, testified that defendant drank approximately a pint of whiskey before leaving her house at 9:00 p.m. on 7 April 2005. A man telephoned her after midnight and said, "Your brother is at the hospital." Russell called defendant's wife, Keisha McNeil (Keisha), who confirmed that he was not at home. Russell drove Keisha to the hospital and found defendant handcuffed to a bed. Russell began cursing the police and was ordered out of defendant's room by White. Defendant did not tell Russell what had happened after he left her house.

Keisha testified that she found defendant "in a rage" and "drunk" when she arrived at the hospital. Defendant told her that

the police were "trying to make [him] say something that [he] didn't do[,]" but did not otherwise describe what had happened.

In his sole argument on appeal, defendant claims that the trial court erred in denying his request for a jury instruction on voluntary intoxication. He avers that the evidence before the court supported a finding that he was so drunk on the morning of 8 April 2005 as to have been incapable of forming the specific intent to rob Williamson.

"Although voluntary intoxication is no excuse for crime, where a specific intent is an essential element of the offense charged, the fact of intoxication may negate the existence of that intent." *State v. Bunn*, 283 N.C. 444, 458, 196 S.E.2d 777, 786 (1973) (citation omitted). In order to be entitled to a jury instruction on involuntary intoxication, however, a "defendant must produce substantial evidence that, at the time of the crime for which he is being tried, [he] was intoxicated to the point that his mind and reason were overthrown, and that he was thus utterly incapable of forming the requisite intent to commit the crime." *State v. Torres*, 171 N.C. App. 419, 422, 615 S.E.2d 36, 38 (2005). Evidence of mere intoxication is insufficient to justify the instruction. *Id.* Moreover, "the defense of voluntary intoxication depends not on the amount of alcohol consumed, but on its effect on the defendant's ability to form the specific intent" required for the charged offense. *State v. Cagle*, 346 N.C. 497, 508, 488 S.E.2d 535, 543, *cert. denied*, 522 U.S. 1032, 139 L. Ed. 2d 614 (1997); *accord State v. Williams*, 343 N.C. 345, 365, 471 S.E.2d 379, 390 (1996) ("[T]he

focus of the inquiry is not the fact of intoxication, but its effect."), *cert. denied*, 519 U.S. 1061, 136 L. Ed. 2d 618 (1997).

Robbery with a dangerous weapon is a specific intent crime, requiring proof that the defendant intended to permanently deprive the owner of the property. *See State v. Bond*, 345 N.C. 1, 23, 478 S.E.2d 163, 174 (1996), *cert. denied*, 521 U.S. 1124, 138 L. Ed. 2d 1022 (1997); *State v. Jerrett*, 309 N.C. 239, 264, 307 S.E.2d 339, 352 (1983). Although the defense of voluntary intoxication is thus applicable to this offense, we agree with the trial court that defendant failed to adduce substantial evidence that his intoxication left him utterly incapable of intending to permanently deprive Williamson of her purse. The defense witnesses testified that defendant was "drunk" on the morning of 8 April 2005, and that he consumed as much as a pint of whiskey over a period of hours before leaving Russell's house at 9:00 p.m. on 7 April 2005. However, neither the quantity of alcohol defendant drank nor the general descriptor "drunk" was sufficient to require a jury instruction on voluntary intoxication. *See Cagle*, 346 N.C. at 508, 488 S.E.2d at 543; *Williams*, 343 N.C. at 365, 471 S.E.2d at 390. In his own testimony, defendant did not purport to have acted unintentionally in assaulting Williamson and taking her purse; nor did he claim to lack an accurate memory of the incident. He denied committing the acts she attributed to him and instead claimed that he merely collided with her while attempting to run from a group of people. While conceding that he accidentally knocked Williamson down, defendant insisted that he took nothing from her and never

possessed a brick. He also denied making the statements attributed to him by Officers Sanders, Whitaker, and White. Finally, defendant explained that he consciously chose to give a false confession to Tillery in order to avoid a protracted interrogation.

The State's witnesses likewise provided no support for the requested instruction, describing defendant as both fully coherent and clear about his intentions in assailing Williamson. Defendant told Sanders that he had entered NCA&T's campus because "he needed to get some money[,]" and told White at the hospital that he saw an opportunity to obtain "easy money" when he spied Williamson walking by herself. After his release from the hospital, defendant gave a taped confession to the robbery at the campus police station. His statements immediately after the offense were inconsistent with a claim that he was unable to form an intention to rob Williamson. *See Torres*, 171 N.C. App. at 422-23, 615 S.E.2d at 38; *State v. Cheek*, 351 N.C. 48, 74-75, 520 S.E.2d 545, 560-61 (1999), *cert. denied*, 530 U.S. 1245, 147 L. Ed. 2d 965 (2000).

The record on appeal includes additional assignments of error which are not addressed in defendant's brief to this Court. Pursuant to N.C. R. App. P. 28(b)(6), we deem them abandoned.

No error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).