NO. COA08-1319

NORTH CAROLINA COURT OF APPEALS

Filed: 19 May 2009

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 07 CRS 232736-38; 40-41

CHRISTOPHER DIANTE WALKER

Appeal by defendant from judgments entered 4 June 2008 by Judge Calvin E. Murphy in Mecklenburg County Superior Court. Heard in the Court of Appeals 4 May 2009.

Attorney General Roy Cooper, by Special Deputy Attorney General Kay Linn Miller Hobart, for the State.

Robert W. Ewing for defendant-appellant.

STEELMAN, Judge.

Evidence presented at trial that defendant took property belonging to Mr. Caldwell was sufficient to withstand defendant's motion to dismiss as to one of the armed robbery charges. When it was shown that two or more offenses were part of a common scheme or plan, the trial court did not abuse its discretion in joining the charges for trial. Defendant has failed to demonstrate that the trial court abused its discretion in imposing consecutive, presumptive-range sentences.

I. Factual and Procedural Background

Edouard Vanga testified that he sold shoes and other clothes from the trunk of his car. On 25 May 2007, two men who previously bought shoes from Mr. Vanga called and asked him to meet them at an apartment complex early in the evening. When Mr. Vanga arrived, he saw the customers, one of whom was Christopher Diante Walker (defendant). Mr. Vanga showed the men the shoes in his trunk, and they agreed on a price for several pairs. The men then reached in their pockets, and defendant pulled out a gun and demanded that Mr. Vanga give him all his money and a gold chain he was wearing. After taking the money and chain, defendant and his accomplice fled in their car.

Mr. Vanga called 911, then got in his car and began to follow defendant to get the license number. The men stopped their car, and the other man, not defendant, walked back to Mr. Vanga's car with a gun and took Mr. Vanga's cell phone and car keys. The man dropped the car keys nearby. Mr. Vanga found his keys, but he never recovered his cell phone. Later, Mr. Vanga made a statement to police and identified defendant from a photo lineup.

On 25 June 2007, Alisha Bell and Adrienne Harris met Kato Green and two of his friends, Christopher Caldwell and George White, at a shopping mall. Mr. Green offered the women a ride home. Like Mr. Vanga, Mr. Green sold shoes and clothes out of his car. As Mr. Green drove the women home, he received a telephone call. Mr. Green drove to an apartment complex adjacent to the complex where Mr. Vanga was robbed to meet two men who told him they were interested in buying shoes.

When they arrived, defendant and another man approached Mr. Green's car. Mr. Green, Mr. White, and Mr. Caldwell got out of the car and opened the trunk to show the men the shoes. As the men discussed prices, defendant's accomplice pulled out a gun, and Mr. Green and the other two men fled. The women remained in the backseat of the car. Defendant and his accomplice then took the shoes out of the trunk of the car. As Mr. Caldwell fled, he lost his hat and one shoe. He stopped to retrieve them, and he saw defendant taking the shoes from the car. Mr. Caldwell testified that when he turned back, the accomplice again pointed the gun at him, and he started to run. Mr. Caldwell further testified that he did not see defendant and accomplice take his shoe and hat, but when he returned to collect them, the items were gone. After defendant and his accomplice took the shoes from the trunk, the accomplice held a gun up to Ms. Harris's head and asked the women for their cell phones and purses. Ms. Bell gave defendant her cell phone and purse, which had $300.00 in it. Defendant and his accomplice also took some items that Mr. White purchased at the mall, including a DVD player.

After defendant and his accomplice left, Ms. Bell and Ms. Harris called 911. Soon thereafter, they saw defendant driving. The women reported the license plate number to police, and the police connected the car to defendant through a rental agency. Defendant's home was near both robberies.

On 24 September 2007, defendant was indicted for six counts of robbery with a dangerous weapon and one count of conspiracy to

commit robbery with a dangerous weapon. On 3 May 2008, the State filed a motion to join the offenses for trial, alleging that the robberies were part of a common scheme or plan and were so closely connected that it would be difficult to separate one charge from another. Over defendant's objection, the trial court allowed the motion to join the cases for trial.

The case went to trial at the 2 June 2008 session of court. At the conclusion of the State's evidence, defendant renewed his motion to sever the charges, which was denied. Defendant then moved to dismiss the charges, and the trial court granted the motion as to the charge related to Mr. Green. The trial court denied the motions to dismiss as to all the other charges. Defendant did not present evidence. The jury found defendant guilty of five counts of robbery with a dangerous weapon and one count of conspiracy to commit robbery with a dangerous weapon.

The trial court consolidated four of the robbery charges into one judgment and imposed an active prison sentence of 51-71 months. The remaining robbery charge and the conspiracy charge were consolidated in a second judgment, which imposed a second, consecutive active sentence of 51-71 months. Defendant appeals.

II. Sufficiency of Evidence - Caldwell Charge

In defendant's first argument, he contends that the trial court erred when it denied his motion to dismiss because the State presented insufficient evidence that defendant took property belonging to Mr. Caldwell. We disagree.

"When a defendant moves for dismissal, the trial court is to determine whether there is substantial evidence (a) of each essential element of the offense charged, or of a lesser offense included therein, and (b) of defendant's being the perpetrator of the offense. If so, the motion to dismiss is properly denied." *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651-52 (1982). "The trial court must review the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Squires*, 357 N.C. 529, 535, 591 S.E.2d 837, 841 (2003), *cert. denied*, 541 U.S. 1088, 159 L. Ed. 2d. 252 (2004).

"Armed robbery has the following essential elements: (1) the 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. Willis*, 127 N.C. App. 549, 551, 492 S.E.2d 43, 44 (1997).

Defendant asserts that the State failed to present evidence he took property that belonged to Mr. Caldwell. However, the State offered the testimony of Mr. Caldwell that defendant took property belonging to him. Mr. Caldwell testified that he lost a shoe and hat while running from defendant and his accomplice. As he stopped to retrieve them, the accomplice again pointed his gun at Mr. Caldwell, Mr. Caldwell then ran away, and when Mr. Caldwell later returned, both the hat and shoe were gone. The State's evidence clearly demonstrated that Mr. Caldwell was threatened by the use of

a firearm, meeting the second and third elements of the offense of armed robbery. Evidence that when Mr. Caldwell attempted to retrieve his hat and shoe, he was again threatened with a firearm, and the hat and shoe were gone after the robbery, was sufficient circumstantial evidence of a taking to withstand defendant's motion to dismiss.

This argument is without merit.

III. Joinder of Offenses for Trial

In his second argument, defendant contends that the trial court abused its discretion when it allowed the State's motion to join the charges together for trial. We disagree.

"Two or more offenses may be joined . . . 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." N.C. Gen. Stat. § 15A-926(a) (2007). "Whether joinder of offenses is permissible under this statute is a question addressed to the discretion of the trial court which will only be disturbed if the defendant demonstrates that joinder deprived him of a fair trial." *State v. Wilson*, 108 N.C. App. 575, 582, 424 S.E.2d 454, 458 (1993), *appeal dismissed and disc. review denied*, 333 N.C. 541, 429 S.E.2d 562-63 (1993).

In order to grant a motion to consolidate, a trial court must first determine that the offenses took place as part of a common scheme or plan. *State v. Floyd*, 115 N.C. App. 412, 416, 445 S.E.2d 54, 57-58 (1994), *disc. review denied*, 339 N.C. 740, 454 S.E.2d 658

(1995), *affirmed*, 343 N.C. 101, 468 S.E.2d 46 (1996). The trial court should consider the nature of the offenses to be joined and the commonality of facts. *Id.* at 416, 445 S.E.2d at 58.

We hold that the trial court acted within its discretion in allowing the State's motion to join the offenses. Defendant's *modus operandi* was virtually identical in each robbery. First, defendant contacted the victims and arranged to buy shoes from them. Second, after victims showed defendant and his accomplice their merchandise, defendant threatened them with a gun and took their property. Third, both robberies took place in less than a month's time and at adjacent apartment complexes near defendant's home. Accordingly, we find the offenses took place as part of a common scheme or plan.

This argument is without merit.

IV. Consecutive Sentences

In his third argument, defendant contends that the trial court abused its discretion by imposing consecutive, presumptive-range sentences. We disagree.

Defendant argues that the trial court considered irrelevant and improper matters in sentencing him because the prosecutor made a statement at trial regarding a previous armed robbery charge to which defendant had confessed but had been dismissed because the victim could not be located.

"When a sentence is within the statutory limit it will be presumed regular and valid unless 'the record discloses that the court considered irrelevant and improper matter in determining the

severity of the sentence.'" *State v. Davis*, 167 N.C. App. 770, 775, 607 S.E.2d 5, 9 (2005)(quoting *State v. Johnson*, 320 N.C. 746, 753, 360 S.E.2d 676, 681 (1987)); *see also State v. Boone*, 293 N.C. 702, 712, 239 S.E.2d 459, 465 (1977).

The record does not suggest that the trial court considered irrelevant or improper matters in determining defendant's sentence. Nothing in the trial court's comments during sentencing suggests that the prosecutor's remarks affected the judgments. Further, although the trial court did not sentence defendant in the mitigated range as he requested, the trial court consolidated six felony offenses into two judgments for the lowest possible minimum sentence in the presumptive range for defendant's prior record level and the class of offense. Defendant has failed to demonstrate that the trial court abused its discretion.

This argument is without merit.

NO ERROR.

Judges HUNTER, ROBERT C. and JACKSON concur.

Reported per Rule 30(e).