NO. COA10-146

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

STATE OF NORTH CAROLINA

v. Rowan County
No. 06 CRS 58415

TYRONE PERNELL CHAMBERS

Appeal by defendant from judgment entered 17 August 2009 by Judge James E. Hardin, Jr. in Rowan County Superior Court. Heard in the Court of Appeals 2 September 2010.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Anne Goco Kirby, for the State.

James N. Freeman, Jr., for defendant-appellant.

JACKSON, Judge.

Tyrone Pernell Chambers ("defendant") appeals his 17 August 2009 conviction of robbery with a dangerous weapon. For the reasons set forth below, we hold no error.

On 27 October 2006 at approximately 10:00 p.m., Mona Moscardini ("Moscardini") exited La Cava restaurant, which she and her family had owned for sixteen years, through a side door and walked into the parking lot. Moscardini proceeded towards her vehicle carrying her purse and an umbrella. When she reached her vehicle, she entered it on the driver's side, placed her purse on

the passenger seat, and began to close her umbrella. At that time, the umbrella flew out of her hand and she found herself face-to-face with a strange man. The man demanded Moscardini's money and then punched her in the face two times.

Moscardini attempted to flee by crawling across the front seat towards the passenger door. She felt someone climb on top of her, and she began kicking and "bucking" in an attempt to get her assailant off of her. The assailant continued to hit Moscardini as she attempted to escape. Pinned underneath her attacker, Moscardini noticed a knife in the floorboard of her car. She picked it up and attempted to stab her attacker in the legs; however, the knife broke after it made contact with her attacker's black nylon jacket.

Moscardini felt herself being pulled from the car onto the ground, where she lay in a fetal position to protect her head, body, and purse. She then was kicked and punched until she released the purse. Moscardini was unsure of whether one person or two people attacked her. After realizing that whoever attacked her had left, Moscardini looked up and saw the person in the black jacket running towards the alley behind an adjacent store in the direction of Bank Street.

Moscardini returned to her restaurant, and the police and EMS were called. Moscardini went to the hospital, where she was treated for two puncture wounds to her left breast. She also had multiple scrape marks on her back and bruising along her forehead and left temple. While at the hospital, Moscardini gave a written

statement about the events that had taken place to Police Officer Travis Shulenburger ("Officer Shulenburger"), which she read into evidence at trial.

At trial, Moscardini testified that she "was sure that the person that punched [her] out had a white jacket on. [She] was absolutely positive about that[,]" and that she remembered "stabb[ing] a black jacket" with the knife in the car. She also testified that she was never able to get a look at the face of either of her attackers.

Police collected a black ball cap and a broken knife that were discovered on the ground beside Moscardini's car. Police also located Moscardini's purse and its contents strewn about an alleyway approximately one block from La Cava, near Bank Street.

Officer Shulenburger testified that on the night of 27 October 2006, he received a call dispatching him to the scene of the La Cava incident. He was advised that a suspect was on Bank Street. As he drove down East Bank Street towards La Cava, he witnessed a black male wearing a black nylon coat involved in a verbal altercation with a black male wearing a cook's uniform. At trial, Officer Shulenburger identified the man in the black jacket as defendant. Officer Shulenburger pulled his police cruiser onto the side of the road and exited the car to approach the two men. As he got out of the car, defendant began to run away. Officer Shulenburger yelled for defendant to stop, but he did not. Officer Shulenburger chased defendant through a field, an intersection, and the backside of a house before he caught up to defendant and

ordered him to the ground. Officer Shulenburger placed defendant under arrest.

At the police station, Officer Shulenburger advised defendant of his rights, obtained defendant's signature on a *Miranda* rights form, and interviewed him about the La Cava incident. Officer Shulenburger testified that defendant initially denied any knowledge or involvement with the La Cava incident and gave his name as Tyrone Jerome Davis. When Officer Shulenburger asked defendant, "[I]f I were to go back and watch secured video footage of the parking lot area of La Cava during the time of the incident, would I see [you] on it[?]" At that time, defendant told Officer Shulenburger that, on 27 October 2006, he had been playing pool with his friend Kevin Toomer ("Toomer"). Toomer had lost "a good deal of money" playing pool that evening and told defendant he intended to get his money back. Defendant told Officer Shulenburger that he understood that statement to mean that Toomer intended to rob someone. Defendant also stated that he parted company with Toomer before the robbery, after which he heard a woman scream, "Help, I'm being robbed," and he ran away. Defendant made a written statement consistent with what he had told Officer Shulenburger and signed with the name Tyrone Davis.

The following evening, Officer Shulenburger discovered defendant's picture attached to the name Tyrone Chambers in the police department's data system. When confronted with this information, defendant stated that he lied about his name so that people on the street would not find out that he was giving

information to the police. Defendant was read his *Miranda* rights again and made a second statement. In the second statement, defendant admitted to lying about his name, but the statement otherwise was similar to the previous one. The second statement was signed with the name Tyrone Chambers.

On 31 October 2006, Michael Colvin ("Investigator Colvin"), a criminal investigator with the Salisbury Police Department, was assigned to the case involving the La Cava incident. Investigator Colvin went to the Rowan County Jail to interview defendant. Defendant was read, and again waived, his *Miranda* rights. Investigator Colvin told defendant that he had reviewed the surveillance tapes from La Cava parking lot and wanted defendant to explain what had happened on 27 October 2006 in defendant's own words. According to Investigator Colvin's notes, defendant stated that he was at the rear of the passenger's side of Moscardini's car when he saw Toomer demand her money and begin to fight with her. He said that he opened the passenger side door for her, at which time, the purse fell out. He then placed the purse on the ground beside the car and left. At the end of the interview, Investigator Colvin reviewed his notes with defendant, and defendant signed them.

On 4 December 2006, a grand jury issued a true bill of indictment against defendant on the charge of robbery with a dangerous weapon. On 13 August 2009, defendant's case came to trial before the Superior Court of Rowan County. At the close of the State's evidence, defendant moved for dismissal of the case due

to insufficiency of the evidence. The trial court denied defendant's motion. On 17 August 2009, a jury found defendant guilty of robbery with a dangerous weapon. The trial court sentenced defendant to a prison term of 103 to 133 months with credit for time served awaiting disposition of the case. Defendant appeals.

Defendant first contends that the trial court erred in denying his motion to dismiss the charge of robbery with a dangerous weapon based upon insufficiency of the evidence. Defendant alleges that the State's evidence does no more than place him near the scene of the crime. We disagree.

It is well-settled that

> [i]n ruling on a motion to dismiss, the issue before the trial court is whether substantial evidence of each element of the offense charged has been presented, and that defendant was the perpetrator of the offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. All the evidence, whether direct or circumstantial, must be considered by the trial court, in the light most favorable to the State, with all reasonable inferences to be drawn from the evidence being drawn in favor of the State. The trial court is not required to determine that the evidence excludes every reasonable hypothesis of innocence prior to denying a defendant's motion to dismiss.

State v. Parker, 143 N.C. App. 680, 686, 550 S.E.2d 174, 178 (2001) (internal quotation marks and citations omitted). If the evidence presented at trial "will permit a reasonable inference that the defendant is guilty of the crime charged, the trial judge should allow the case to go to the jury." *State v. Faison*, 330 N.C. 347,

358, 411 S.E.2d 143, 149 (1991) (citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)).

North Carolina General Statutes, section 14-87(a) defines robbery with a dangerous weapon as

> [a]ny person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87(a) (2005). Our Supreme Court has held that "'the essential elements of robbery with a dangerous weapon are: (1) an 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. Gwynn*, 362 N.C. 334, 337, 661 S.E.2d 706, 707–08 (2008) (quoting *State v. Haselden*, 357 N.C. 1, 17, 577 S.E.2d 594, 605, *cert. denied*, 540 U.S. 988, 157 L. Ed. 2d 382 (2003)).

Additionally, this Court has held that "[a] person who aids or abets another person or persons in the commission of the offense of armed robbery is equally guilty as a principal." *State v. Donnell*, 117 N.C. App. 184, 188, 450 S.E.2d 533, 536 (1994) (citing N.C. Gen. Stat. § 14-87(a) (1993)). *See State v. Roddey*, 110 N.C. App. 810, 813, 431 S.E.2d 245, 247 (1993) ("The offense described in

N.C.G.S. § 14-87(a) as robbery with a dangerous weapon is more commonly known as armed robbery."). Though mere presence at the scene of a crime is insufficient to find a defendant guilty, "[c]ircumstances to be considered in determining whether [defendant] aided and abetted in the perpetration of the crime are his relationship to the actual perpetrator, the motives tempting him to assist, his presence at the time and place of the crime, and his conduct before and after the crime." *State v. McCabe and State v. Loften*, 1 N.C. App. 461, 466, 162 S.E.2d 66, 70 (1968) (citing *State v. Birchfield*, 235 N.C. 410, 414, 70 S.E.2d 5, 8 (1952)).

In the case *sub judice*, the evidence presented by the State tended to show that: (1) defendant was with Toomer the night of 27 October 2006; (2) defendant told police that he understood statements made by Toomer to mean that Toomer intended to rob someone; (3) Moscardini attempted to stab the legs of one of her attackers, who was wearing a black jacket or coat; (4) after her purse was taken, Moscardini witnessed the man in the black jacket fleeing towards Bank Street through an alleyway; (5) Moscardini suffered two stab wounds to her chest and her purse was stolen during the attack; (6) Moscardini's discarded purse was located by police in an alleyway approximately one block from La Cava and near Bank Street, consistent with the direction in which Moscardini had seen the man in the black jacket running; (7) defendant was located on Bank Street by Officer Shulenburger shortly after Officer Shulenburger received the police dispatch reporting the La Cava incident; (8) defendant attempted to flee when approached by

Officer Shulenburger and did not respond to two requests to stop; and (9) defendant was wearing a black jacket when he was arrested on 27 October 2006. Further, defendant's statements, that he merely opened the passenger door and set the purse beside the car when it fell out, were contradicted by the testimony of Moscardini. Moscardini testified that the passenger door was opened when one of her attackers climbed over top of her and exited the door. She also testified that the purse was in her possession as she was pulled out of the car. This evidence, when taken as a whole and considered in the light most favorable to the State, is sufficient to support a reasonable inference that defendant committed the crime of robbery with a dangerous weapon. Accordingly, we cannot say that the trial court erred in denying defendant's motion to dismiss.

In his second assignment of error, defendant argues that the trial court erred in denying his request to discharge his appointed attorney and hire his own lawyer. We disagree.

Although an indigent criminal defendant has the constitutional right to assistance of counsel, "this does not mean that the defendant is entitled to counsel of his choice or that defendant and his court-appointed counsel must have a 'meaningful attorney-client relationship.'" *State v. Kuplen*, 316 N.C. 387, 396, 343 S.E.2d 793, 798 (1986) (citation omitted). "In the absence of a constitutional violation, the decision about whether appointed counsel shall be replaced is a matter solely for the discretion of the trial court." *Id.* (citing *State v. Sweezy*, 291

N.C. 366, 371–72, 230 S.E.2d 524, 529 (1976)). When ruling on a motion to dismiss counsel, "the trial judge must satisfy himself only that the 'present counsel is able to render competent assistance and that the nature or degree of the conflict is not such as to render that assistance ineffective.'" *State v. Poole*, 305 N.C. 308, 311, 289 S.E.2d 335, 338 (1982) (quoting *State v. Thacker*, 301 N.C. 348, 353, 271 S.E.2d 252, 256 (1980)).

It is "the obligation of the court to inquire into defendant's reasons for wanting to discharge his attorneys and to determine whether those reasons were legally sufficient to require the discharge of counsel." *State v. Hutchins*, 303 N.C. 321, 335, 279 S.E.2d 788, 797 (1981). However, a defendant does not have the right to have his counsel removed "merely because he has become dissatisfied with the attorney's services[,]" *id.* (citation omitted), or because of "a mere disagreement over trial tactics[,]" *State v. Thacker*, 301 N.C. 348, 353, 271 S.E.2d 252, 255 (1980). "Similarly, the effectiveness of representation cannot be gauged by the amount of time counsel spends with the accused[.]" *Hutchins*, 303 N.C. at 335, 279 S.E.2d at 797. If the defendant fails to show sufficient cause warranting the replacement of his counsel, he must either accept the court-appointed counsel or present his own defense. *Id.*

Here, defendant faxed a request to discharge his counsel to the District Attorney's office the evening before his trial. Even though the request was not made in proper form, the trial court treated defendant's request as a motion to discharge his counsel.

When the trial court inquired as to defendant's reasons for requesting the removal of his counsel, the following colloquy occurred:

> THE COURT: I'll be glad to hear you now with respect to what you want.
>
> THE DEFENDANT: I would like to hire my own attorney for this trial 'cause I don't feel comfortable going to -- going to trial with this attorney.
>
> THE COURT: All right. Is there anything else you want to say about it?
>
> THE DEFENDANT: No, sir. I don't feel comfortable.

Defendant also stated that his attorney had been to visit him at jail "maybe five -- five to six times" since 2006.

In addition, the trial court heard from defendant's mother, who expressed her opinion that defendant's counsel had not kept her or defendant informed of the progress of his case. She testified that, when she telephoned counsel, "he would have his secretary tell me I was calling too many times" and "[h]e would never discuss anything." Defendant did not provide any additional information to support his motion, nor did defendant at any time request to represent himself.

The trial court noted that defendant's counsel had represented defendant since being appointed on 2 November 2006. In response to inquiries made by the trial court, defendant's counsel stated that he had investigated the case to a reasonable extent to formulate any defenses available to defendant, discussed the case with his

client, visited his client many times, felt prepared for and ready to go to trial, and had exercised due diligence.

The trial court also heard from the State. The Assistant District Attorney ("ADA") stated that, in her opinion, defendant's counsel had been diligent in his representation of defendant. She explained that defendant's counsel had made several motions on behalf of defendant and that she had corresponded with counsel for defendant several times regarding defendant's case. The ADA further stated that defendant had affirmed that he was satisfied with his counsel's legal services during a plea discussion held the day prior to the trial.

After hearing from all parties, the trial court determined that defendant's counsel had "acted in a diligent and appropriate fashion to represent this defendant." Accordingly, we hold that the trial court satisfied its duty to inquire into defendant's reasons for requesting the dismissal of his counsel. Because defendant did not present any legally sufficient reason justifying the replacement of his attorney, his motion to dismiss his counsel properly was denied by the trial court.

No error.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).