NO. COA10-1565
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v. Scotland County
Nos. 09 CRS 02478-80

TYQUAN SANCHEZ SCRIVEN

Appeal by defendant from judgments entered 16 June 2010 by Judge Jack Hooks in Scotland County Superior Court. Heard in the Court of Appeals 18 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General Phillip K. Woods, for the State.

Cheshire, Parker, Schneider, Bryan & Vitale, by Maitri "Mike" Klinkosum, for defendant.

ELMORE, Judge.

On 14 June 2010, Tyquan Sanchez Scriven (defendant) was convicted of three counts of robbery with a dangerous weapon. Defendant was sentenced to 77 to 102 months' imprisonment for the first count of robbery with a dangerous weapon and 61 to 83 months' imprisonment for the other two counts of robbery with a dangerous weapon, with the two sentences to run consecutively. Defendant appeals, alleging that the State presented

insufficient evidence to carry its burden and that the trial court therefore erred when it denied his motion to dismiss. After careful consideration, we hold that defendant received a trial free from error.

On the evening of 13 August 2009, defendant knocked on the door of "Diamonds," an establishment that provides access to video games, snacks, and refreshments to its members. The front door of Diamonds is always kept locked from the inside for security purposes, requiring someone inside to open the door for anyone to enter.

On that evening, the Diamond's clerk was the person who opened the door for defendant. Defendant was not registered in Diamond's system, so the clerk opened an account for defendant and identified him as a "new player." Defendant played games while talking on his cell phone for the majority of the two-and-a-half hours that elapsed between when he entered the building and when the robbery occurred. Shortly before the robbers entered the building, defendant made a call on his cell phone to a phone that was later found to have belonged to one of the robbers, Thomas Scott Ivey. After he dialed the number, defendant made his way to the door of the building and said "man, I'm coming" into his phone. Defendant then opened the

door and went outside. At that moment, the door flew open and two robbers brandishing firearms and wearing ski masks rushed into the room.

At this point, defendant was outside the building, but he willingly reentered when one of the robbers told him to shut the door. The two robbers emptied the drawers behind the counter and ordered all of the patrons, with the lone exception of defendant, onto the ground. The robbers took keys, cell phones, money, and other personal property from the patrons. Throughout the robbery, the robbers paid little attention to defendant; they neither yelled at him nor pointed their weapons at him, and defendant remained calm after the robbers left.

Later that evening, after authorities had arrived on the scene, defendant was asked by an officer why he had reentered the building after seeing two armed, masked men enter the premises. Defendant responded that he did not flee because he was worried that the victims would think he was somehow involved in the robbery. The officer, after interviewing witnesses and watching the surveillance video, arrested defendant on charges of robbery with a dangerous weapon.

On 17 August 2009, after receiving additional evidence from a relative of defendant, authorities arrested Thomas Scott Ivey.

Ivey is defendant's brother-in-law, and defendant and his sister, Ivey's wife, lived with Ivey at the time of the robbery. Authorities searched the residence and discovered defendant's cell phone, which defendant told officers had been stolen from him during the robbery.

A trial was held on 14 June 2010. The jury returned verdicts of guilty on all three counts of robbery with a dangerous weapon by aiding and abetting. Defendant now appeals.

Defendant argues that the trial court erred by denying his motion to dismiss the robbery with a dangerous weapon charge for insufficient evidence. We disagree.

When a defendant moves for dismissal based on insufficiency of the evidence, the trial court must determine

> whether the State has presented substantial evidence of each essential element of the offense charged and substantial evidence that the defendant is the perpetrator. If substantial evidence of each element is presented, the motion for dismissal is properly denied. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

State v. Cross, 345 N.C. 713, 716–17, 483 S.E.2d 432, 434 (1997) (quotations and citations omitted). "In considering the motion, the trial court must view the evidence in the light most favorable to the State, giving the State the benefit of every

reasonable inference to be drawn from the evidence, and resolving any contradictions in favor of the State." *State v. Anderson*, 181 N.C. App. 655, 659, 640 S.E.2d 797, 801 (2007) (citation omitted). Further, "[c]ircumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Taylor*, 337 N.C. 597, 604, 447 S.E.2d 360, 365 (1994) (quotations and citation omitted).

> A person is guilty of a crime by aiding and abetting if (i) the crime was committed by some other person; (ii) the defendant knowingly advised, instigated, encouraged, procured, or aided the other person to commit that crime; and (iii) the defendant's actions or statements caused or contributed to the commission of the crime by that other person.

State v. Goode, 350 N.C. 247, 260, 512 S.E.2d 414, 422 (1999).

There is no dispute with respect to the first element, as there was no evidence suggesting that defendant personally robbed any of the victims. All available evidence showed that the actual robbery was performed by the masked individuals defendant let into the building, not by defendant himself. The State's evidence, therefore, is sufficient to support this first element.

With respect to the latter two elements, our courts have stated:

> A person is not guilty of a crime merely because he is present at the scene even though he may silently approve of the crime or secretly intend to assist in its commission; to be guilty he must aid or actively encourage the person committing the crime or in some way communicate to this person his intention to assist in its commission.

Id. "The communication or intent to aid, if needed, does not have to be shown by express words of the defendant but may be inferred from his actions and from his relation to the actual perpetrators." *State v. Sanders*, 288 N.C. 285, 291, 218 S.E.2d 352, 357 (1975) (citations omitted). "[W]hen the bystander is a friend of the perpetrator and knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement." *Goode*, 350 N.C. at 260, 512 S.E.2d at 422. Finally, "In ruling on a motion to dismiss in the context of aiding and abetting, the court may also . . . consider the defendant's conduct before and after the crime." *State v. Walker*, 167 N.C. App. 110, 132, 605 S.E.2d 647, 662 (2004), *vacated in part by* 361 N.C. 160, 695 S.E.2d 750 (2006).

Here, defendant contends that the State presented insufficient evidence to prove that he was aiding and abetting the two masked men. We are unpersuaded. The evidence, viewed in the light most favorable to the State, would allow a

reasonable mind to conclude that defendant, by entering Diamonds and talking on his cell phone for almost the entire two-and-a-half hours he was inside, was "casing" the location in preparation for the robbery. A reasonable mind could also conclude that the final phone call made by defendant to the phone of one of the robbers, a man who was defendant's own brother-in-law, was a signal to the robbers waiting outside that defendant was approaching the door to grant them access. Finally, a reasonable mind might conclude from the behavior of the robbers towards defendant during the robbery and defendant's own demeanor during and after the event that defendant was in on the robbery and knew both that the robbery was about to happen and who the robbers were under their masks.

The evidence presented by the State would allow a reasonable mind to decide that defendant aided the robbers in the commission of the crime by both scouting out the location of the robbery and by opening the always-locked door from the inside to enable the robbers to enter. Further, a reasonable mind could also decide that, through his relationship with one of the robbers and his actions before and after opening the door, defendant caused or contributed to the commission of the crime.

Accordingly, we hold that the trial court did not err by denying defendant's motion to dismiss for insufficient evidence and defendant received a trial free from error.

No error.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).