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NO. COA10-234

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2010

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 08 CRS 60166

EARL DOUGLAS CONRAD

Appeal by defendant from judgments entered 30 September 2009 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 25 October 2010.

Roy Cooper, Attorney General, by Sharon Patrick-Wilson, Special Deputy Attorney General, for the State

Jon W. Myers, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Earl Douglas Conrad was indicted on two counts of assault with a deadly weapon with intent to kill inflicting serious injury in violation of N.C.G.S. § 14-32(a). He entered pleas of not guilty.

The State's evidence tended to show that on 16 September 2008, Timothy Hawley and his former girlfriend, Kimberly Parker, went to the home of David Sink. A short time later, defendant and defendant's son, "Junior," arrived at Sink's home. A fifth person, Steve Hannon, was also at Sink's home. Hawley testified that "[e]veryone was drinking beer[,] and that he had had six or seven

beers himself. Eventually, defendant, Junior, Hannon, Hawley and Parker left Sink's home together. Hawley testified that "Steve [Hannon] knew a place to go to get some crack cocaine, and we was all chipping in on it and going to get some." The group got into defendant's car, and Junior drove the group to the place where Hannon intended to purchase the cocaine.

Upon arriving at their destination, Hannon got out of the car and went up to a house. A short time later, he returned to the car with one piece of crack cocaine. Hawley testified that Hannon did not share the crack cocaine with the group, and did not return their money. Hawley stated that next:

Junior and Earl Senior both jumped out of the car. Steve [Hannon] was at the side of the car, and they swung a knife at him and tried to cut his throat, and he took off running.

Hawley and Parker then provided differing testimony of what occurred following Hannon's departure. Hawley testified that after Hannon left, he was seated in the backseat of the car, Parker was seated in the front of the car, defendant was driving, and Junior was seated in the backseat next to him. Hawley then testified as follows:

We barely got going down the road, and Earl Senior said, "Kill that ghost." And [Junior] stabbed me, gutted me right here in the side while we was still in the car, before we even pulled out the driveway.

After being stabbed by Junior, Hawley doubled over in pain. Junior tried to stab him again, and Hawley tried to grab the knife, resulting in an injury to his thumb. Hawley then testified:

Then we took off down the road. And the next thing I remember, I was getting pulled out of the car and Earl Senior was beating me all in my face . . . and holding me while [Junior] stabbed me in the back four more times.

Parker testified that after Hannon ran away, defendant pulled Hawley out of the car, and defendant and Hawley began fighting. Parker jumped out of the car to help Hawley, and Junior grabbed her, threw her to the ground, and stabbed her. Parker stated that she was stabbed twice in her left leg, and once in her back.

Defendant was convicted of assault with a deadly weapon with intent to kill inflicting serious injury for the assault on Hawley, and assault with a deadly weapon inflicting serious injury for the assault on Parker. The trial court sentenced defendant to concurrent terms of 74 to 98 and 200 to 249 months' imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to dismiss the charge of assault with a deadly weapon with intent to kill inflicting serious injury for the assault on Parker. Defendant contends the State failed to present any evidence that he acted in concert with Junior to commit the assault on Parker because the assault on Parker was not committed in pursuance of a common purpose or as a natural or probable consequence of defendant's assault on Hawley.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). To survive a motion to dismiss, the State must

present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). When reviewing the sufficiency of the evidence, "[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994) (citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)). "The trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility." *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256, cert. denied, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002).

Here, defendant was convicted under the theory that he acted in concert with his son to commit the charged offense. "If two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose . . . or as a natural or probable consequence thereof." *State v. Mann*, 355 N.C. 294, 306, 560 S.E.2d 776, 784 (2002). Despite Hawley and Parker testifying to slightly different versions of the assault, a jury could reasonably infer from their

testimony that Junior stabbed Parker in order to ward off her aid to Hawley, who at that time was being held down and beaten by defendant. A jury could also infer that the assault on Parker was committed in the pursuit of the common plan of defendant and Junior to assault Hawley. See *State v. Tirado*, 358 N.C. 551, 582, 599 S.E.2d 515, 536 (2004) (“[W]here a defendant and a co-defendant shared a criminal intent and the co-defendant who actually committed the crime knew of the shared intent, if the defendant was in a position to aid or encourage the co-defendant when the co-defendant committed the offense, the defendant was constructively present and acting in concert with the co-defendant.”). Accordingly, taking the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom, we hold that the evidence was sufficient to show that defendant acted in concert to commit the offense of assault with a deadly weapon inflicting serious injury such that the trial court did not err by denying defendant’s motion to dismiss. Defendant’s assignment of error is overruled.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).