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NO. COA12-535  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v.

Forsyth County  
No. 11 CRS 051614  
11 CRS 337

MICHAEL JEROME BULGER

Appeal by defendant from judgment entered 16 November 2011 by Judge V. Bradford Long in Forsyth County Superior Court. Heard in the Court of Appeals 26 November 2012.

*Roy Cooper, Attorney General, by Victoria L. Voight, Special Deputy Attorney General, for the State.*

*Jarvis John Edgerton, IV for defendant-appellant.*

MARTIN, Chief Judge.

Defendant appeals from judgment entered after a jury found him guilty of robbery with a dangerous weapon and having attained habitual felon status. We find no error.

The State's evidence tended to show that on 18 February 2011, Ashley Boston was working as a cashier at Harbor Freight Tools in Winston-Salem. At approximately 6:40 p.m., defendant

entered the store and walked to the power tools section. Defendant grabbed a Chicago multi-function tool and headed towards the front of the store. When defendant took the tool and began walking towards the front door, Ms. Boston walked around the counter and told defendant he could not take the tool out of the store. Defendant told Ms. Boston not to get any closer and pulled a sharp object, which Ms. Boston thought was a knife, from his right pocket. Defendant stated that he had a drug problem and walked out of the front door. When defendant was later apprehended he was carrying the tool, and a pair of scissors was located on his person.

On appeal, defendant contends the trial court erred by denying his motion to dismiss the robbery with a dangerous weapon charge because the State failed to prove a causal link between his brandishing the scissors and Ms. Boston's decision not to try and stop him from leaving the store with the merchandise. We disagree.

"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). "'Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged,

or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-9, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

A conviction for robbery with a dangerous weapon requires "(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. Haselden*, 357 N.C. 1, 17, 577 S.E.2d 594, 605, *cert. denied*, 540 U.S. 988, 157 L. Ed. 2d 382 (2003). "To be found

guilty of robbery with a dangerous weapon, the defendant's threatened use or use of a dangerous weapon must precede or be concomitant with the taking, or be so joined by time and circumstances with the taking as to be part of one continuous transaction." *State v. Olson*, 330 N.C. 557, 566, 411 S.E.2d 592, 597 (1992).

Applying the foregoing principles to the present case, we conclude the State produced substantial evidence to prove that the use of the scissors and taking of the tool were part of one continuous transaction. The evidence tended to show that Ms. Boston came from behind the counter and told defendant he could not take the tool out of the store. After defendant instructed Ms. Boston not to come closer to him and pulled the scissors out of his pocket, Ms. Boston let defendant leave the store with the tool. This evidence was sufficient to support a reasonable finding that defendant's use of the scissors was so joined by time and circumstances to the taking of the tool as to make the use of the scissors and the taking of the tool part of one continuous transaction. Therefore, we hold that viewing the evidence in the light most favorable to the State, the evidence is sufficient to enable a reasonable jury to find defendant guilty of robbery with a dangerous weapon.

No error.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).